IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-416

DELAWARE STATE BOARD OF EDUCATION, ET AL.,
Appellants,

vs.

BRENDA EVANS, ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE.

APPELLANTS' MEMORANDUM IN REPLY TO MOTION TO AFFIRM.

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1. Appellees' distortion of the facts cannot be corrected in detail in this memorandum. Suffice it to say that Appellants' statement of facts derives from the opinions of the trial court and its accuracy can be checked against those records.

2. Appellees' attempt to distinguish *Milliken* v. *Bradley*, 418 U. S. 717 (1974), and *Bradley* v. *School Board of the City of Richmond*, 462 F. 2d 1058 (4th Cir., 1972), *aff'd by equally divided Court*, 412 U. S. 92 (1973), with regard to the so-called "housing violations," again rejects the plain facts. The record of "housing violations" in the trial courts in *Milliken* and in *Richmond* is far more extensive than that in the trial court here. The "housing violations" in those cases were held not to consti-

tute constitutional violations, nor do the facts here warrant such a conclusion.

3. Appellees' attempt to dispose of the primary "constitutional violation." The unconstitutionality of the Educational Advancement Act, in the face of the command of *Washington* v. *Davis*, 96 S. Ct. 2040 (1976), would ignore the requirement that a constitutional violation must be based on segregatory intent. The clear holding of the court below cannot be evaded: "We cannot conclude, as plaintiffs contend, that the provisions excluding the Wilmington School District were purposefully racially discriminatory." 393 F. Supp. at 439.

4. The proposition that this Court has already passed on the merits of this case is also without substance. The earlier appeal presented only the question whether the trial court had abused its discretion in ordering the parties to submit both interdistrict and intradistrict plans. "In reviewing such interlocutory relief, this Court may only consider whether issuance of the injunction constituted an abuse of discretion." *Brown* v. *Chote*, 411 U. S. 452, 457 (1973); *cf. Doran* v. *Salem Inn, Inc.*, 422 U. S. 922 (1975).

5. Appellees, like Appellants, read the judgment below, as it must be read, to continue the injunction against enforcement of the Educational Advancement Act contained in the interlocutory order.

6. Since Appellants' Jurisdictional Statements were filed, this Court has granted review in *Milliken* v. *Bradley*, No. 76-447, 45 U. S. L. W. 3363 (15 Nov. 1976), raising cognate questions as to the scope of a proper remedy. Here as there the question of the authority of a federal district court to take over, reconstruct, and manage state and local governmental educational units is raised. Appellees' contentions here are the same as

respondents' contentions there. The issues in this case, while factually distinguishable, present the same problem of excessive judicial interference and should be heard along with *Milliken* v. *Bradley*.

Respectfully submitted,

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